

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LESLIE EVANS,	:
	:
Petitioner,	:
	:
vs.	: CIVIL ACTION NO. 11-00544-KD-B
	:
CARTER F. DAVENPORT, <i>et al.</i> ,	:
	:
Respondents.	:

REPORT AND RECOMMENDATION

This action, which has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(3)¹, is before the Court on Petitioner Leslie Evans' Motion for Issuance of a Certificate of Appealability. (Doc. 19). On February 14, 2012, the undersigned Magistrate Judge issued a Report and Recommendation, which recommended that Evans' petition seeking habeas relief under 28 U.S.C. § 2254 be denied as successive, and Evans should not be granted a certificate of appealability as no reasonable jurist could find it debatable

¹ Since this recommendation is made after a referral pursuant to 28 U.S.C. § 636(b)(3), the plaintiff does not have an opportunity to file objections. Minetti v. Port of Seattle, 152 F. 3d 1113, 1114 (9th Cir. 1998) ("Section 636(b)(3) does not provide a party with ten days to file written objections with the district court."); United States v. Gibbs, 2008 U.S. Dist. LEXIS 105254 (S.D. Ala. Dec. 23, 2008). The Clerk is therefore directed to refer this matter to the District Judge for her consideration without the necessity of a waiting period.

whether his habeas petition should be dismissed as successive. (Doc. 12). District Judge DuBose adopted the Report and Recommendation as the opinion of the court, and entered a final judgment on March 22, 2012. (Docs. 16, 17). In light of the foregoing, Evans' Motion for Certificate of Appealability is due to be **denied**.

DONE this **23rd** day of **May**, 2012.

/s/ SONJA F. BIVINS
UNITED STATES MAGISTRATE JUDGE